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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,745	09/28/2006	Konrad Pieger	11371/149(2003P19547WOUS)	4951
757 7590 07/09/2010 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER SHAKERI, HADI				
ART UNIT		PAPER NUMBER		
3727				
MAIL DATE		DELIVERY MODE		
07/09/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/594,745

Applicant(s)

PIEGER ET AL.

Examiner

HADI SHAKERI

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 11, 12, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 11, 12, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 1, 2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 6, 11, 12, 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 1 and 12, the language as written, i.e., last four lines renders the claims ambiguous, since firstly, "one of the sub-links" appears to define only one front foot; and secondly the structures and the features defining the motion of the sub-linkage and the location of the drive unit are not positively and clearly recited or defined earlier in the claims. For example each sub-linkages having a pair of front scissor feet rotatably connected to the base plate/bottom part at a bottom end defining an axis of rotation; and each sub-linkages having a pair of rear scissor feet operatively connected at an upper end defining said articulation axis.

Claim Rejections - 35 USC § 102

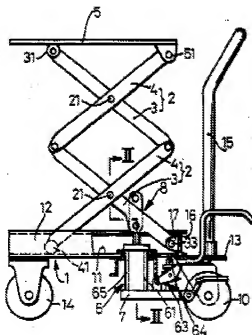
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6, 11, 12, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujita (4,447,041).

Fujita discloses all of the limitations of claims 1 and 20, i.e., a lifting device comprising a patient support/top part 5 a base plate 1; a lifting linkage 2 that connects the patient support to the base plate and has at least two sub-linkages 3, 4 connected to one another via a central articulation i.e., the right joint connecting upper part of lower leg 4 to the lower part of the upper leg 3 as shown here ;



and a drive unit 6, 7 that is operable to adjust the height of the patient support, and act on the central articulation via 32 and leg 3 (note that limitations from specification are not read into the claim, e.g., "directly coupled to the central joint defined by connection of an upper part of the rear feet of one of the links to a lower part of front feet of the other links via a connection") wherein one of the at least two sub-linkages is rotatably

connected to the base plate by front scissors feet **17** (note that front/rear are met lacking recitation structurally limiting the term), and wherein the drive unit is arranged between the front scissors feet **between legs 3, Fig. 2** in a plane through an axis of rotation of the front scissors feet and the central articulation, i.e., the plane going through 7 at about 63, 68, all of which defines or may be considered to define the drive unit.

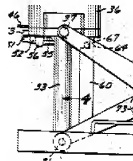
Regarding claims 6, 11, 20 and 21, Fujita meets the limitations, i.e., rear scissor feet **4** sliding on the base plate when the patient support/top plate is raised via a slide **41** in a running rail **12**.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 1, 6, 11, 12, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujita in view of Rapp.

Fujita meets all of the limitations of the indicated claims as described above, however, in the alternative and in order to expedite the prosecution it may be considered to fail disclosing for the drive unit to "act" on the central articulation and the drive unit to be positioned on a plane through the axis of rotation and the central articulation.

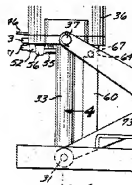
Rapp teaches that a drive unit may be connected between the lower front scissors feet and the central articulation and acts on the central articulation. To mount the drive unit of Fujita between the front scissors feet and



the central articulation would have been obvious in view of the teachings of Rapp. One skilled in the art would have been motivated to do this in order to provide a more convenient accessible location for the drive unit and/or as an alternative means of achieving the same results and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikes*, 86 USPQ 70.

Response to Arguments

9. Applicant's arguments filed July 1, 2010 have been fully considered but they are not persuasive. Applicant's argument that Fujita fails to disclose a drive unit positioned as recited, is not persuasive, since as indicated above the element 7 may be also be considered as part of the "drive unit" which is positioned at a plane defined by axis of rotation and the central articulation. However the invention of Fujita as modified per the teaching reference and/or in view of mere rearrangement of parts (i.e., the drive, as described above) meets the claims as recited. The argument that Rapp, fails to disclose a drive unit arranged between the front scissors feet in a plane through an axis or rotation of the front scissors feet and the central articulation is invalid. Rapp clearly discloses a drive unit that is at least partially (similar to the instant application, since not the entire drive unit is positioned as recited) arranged to meet the claim as recited, i.e., at least partially on a plane that passes through the axis of rotation of the leg and the central articulation. Note that combination is applied to the claim and not Rapp individually, i.e., **31** defines the axis of rotation and **97** defines the central articulation and **36, 33** define the drive unit.



In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is 571-272-4495. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 6, 2010

/Hadi Shakeri/
Primary Examiner, Art Unit 3727